IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.L.P..No. 135 of 2007()

ST.391/2004 of J.M.F.C.-I,THRISSUR

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PETITIONER/COMPLAINANT:

T.J. THOMAS, S/O.THARAYIL OUSEPH,
NELLUVAI P.O., ERUMAPETTY, THALAPPILLY TALUK.

BY ADV. SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS: ACCUSED/STATE:

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1. P.D. ANTONY, S/O. PORATHUR DEVASSY,
THAYYUR P.O., THALAPPILLY TALUK.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.P.RAVINDRA BABU FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 135 of 2007

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Dated this the 2nd day of March, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in S.T.No.391/2004 on the file of the Judicial Magistrate of First Class-I, Thrissur. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.70,000/- from the petitioner and in discharge of the above debt, he issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. To prove the case against the 1st respondent, the complainant himself was examined as PW1 and Exts.P1 to P7 were marked. On the side of the defence, Exts.D1 to D3 were marked. When the 1st respondent was questioned under section 313 Cr.P.C., he denied the transaction. He stated that he borrowed an amount of Rs.12,000/- in the year 2000, issued a blank cheque and blank signed papers to secure the amount and the said cheque was misused by filling up with exorbitant amount. After considering the entire evidence the trial court found that "**PW1 is discredited and he is not believed and his evidence cannot be acted upon to find that a duly executed cheque was issued in 2003"**. The case of the petitioner is that he lent money only in the year 2003. It is seen that in cross-examination PW1

admitted that the 1st respondent borrowed Rs.12,000/- in 2000 and it was repaid by him at that time. The trial court found that the evidence makes probable the defence case that the 1st respondent borrowed the amount in 2000 and the dispute arose thereon. Therefore, the trial court held that the prosecution has filed to prove that the 1st respondent issued any cheque towards legally enforceable debt.

2. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires no interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. 701 /2006

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ORDER

20-12-2006